UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES – SAN FRANCISCO BRANCH OFFICE

THE BOEING COMPANY

And **Case 19-CA-128941**

SOCIETY OF PROFESSIONAL ENGINEERING EMPLOYEES IN AEROSPACE, affiliated with INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS, LOCAL 2001

Patrick E. Berzai, Esq.,

for the General Counsel.

Richard B. Hankins, Esq., Alston D. Correll, and Brennan W. Bolt, Esq. *(McGuire Woods LLP),*

for the Respondent.

Thomas B. Buescher, Esq. *(Buescher, Kelman, Perera & Turner P.C.),*

for the Charging Party.

DECISION

Dickie Montemayor, Administrative Law Judge. This case was tried before me on January 27, 2015, in Seattle, Washington. The case involves an allegation that Boeing (the Respondent) failed to provide the Society of Professional Engineering Employees in Aerospace, affiliated with International Federation of Professional & Technical Engineers, Local 2001 **(**the Union**)** certain information requested by the union. The Respondent, for its part, denied that it had any obligation under the Act to provide the requested information. I find that Respondent violated the Act essentially as alleged.

STATEMENT OF THE CASE

The complaint alleged that Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union certain relevant requested information. Respondent filed a timely answer to the complaint denying all violations of the Act. Counsel for the General Counsel, the Union, and the Respondent filed briefs in support of their positions on March 3, 2015. On the entire record, I make the following findings, conclusions of law, and recommendations.

FINDINGS OF FACT

I. Jurisdiction

The complaint alleges, Respondent admits, and I find that at all material times, Respondent has been a State of Delaware Corporation with its headquarters in Chicago, Illinois, that manufactures and produces military and commercial aircraft at various facilities throughout the United States, including Everett, Washington, and others in the Seattle, Washington metropolitan area.

The complaint further alleges, Respondent admits, and I find that at all material times Respondent, in conducting these operations, derived gross revenues in excess of $500,000 and purchased and received at its corporate headquarters products, goods, and materials valued in excess of $50,000 directly from points located outside the State of Washington.

The complaint alleges, Respondent admits, and I find that Respondent is and has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and further, the Union, is, and has been a labor organization within the meaning of Section 2(5) of the Act.

Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

II. Labor Organization

The complaint alleges, Respondent admits, and I find that at all times material herein, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices.

Background

The Respondent is an aerospace company that employs approximately 150,000 employees 80,000 of which are located in Puget Sound, Washington. (Tr. 95.) Respondent is divided into four major groups: (1) Boeing Commercial Airplanes ("BCA"); (2) Boeing Defense and Space Group ("BDS"); (3) Engineering Operations and Technology ("EO&T"); and (4) Shared Services Group ("SSG"). (Tr. 95, 127.).

i. The Professional and Technical Bargaining Units

The Respondent has recognized the Union as the exclusive collective-bargaining representative of the "Professional" and "Technical" bargaining unit employees. The "Professional" unit consists of fully degreed engineers who perform engineering work and the "Technical" unit is comprised of employees with a variety of degrees performing hands on work on the airplanes. (Tr. 95, 96 GC Exh. 2 art. 1, GC Exh. 3 art. 1).

ii. Joint Stipulation of Facts

Prior to the commencement of the trial, the Charging Party and Respondent stipulated to the following facts:

1. Since at least 1990, Boeing has unilaterally decided and implemented decisions to relocate, realign, and move work performed by SPEEA-represented employees in the Puget Sound to be performed by other Boeing employees and/or non-Boeing employees.

2. Since 2013, Boeing unilaterally decided and did relocate, realign, or move work performed by SPEEA-represented employees in the Puget Sound to be performed by other Boeing employees including, but not limited to, the following instances:

a. 2013:

i. Establishment of Boeing Commercial Airplanes ("BCA") engineering design center;

ii. 3-D Modeling work affecting approximately 7 SPEEA-represented employees in the Puget Sound;

iii. BCA Commercial Aviation Services ("CAS") Fleet Services modifications and freighter conversions work affecting approximately 300-400 SPEEA-represented employees in the Puget Sound;

iv. BCA CAS Out-of-Production Airplane Support affecting approximately 300 SPEEA represented employees in the Puget Sound;

v. Product Development advanced concepts work affecting approximately 60 SPEEA-represented employees in the Puget Sound;

vi. 787 sustaining aft body structures and systems installation design work affecting approximately 10 SPEEA-represented employees in the Puget Sound;

vii. APU engineering work affecting approximately 13 SPEEA-represented employees in the Puget Sound;

viii. Propulsion Integration Center work affecting approximately 5-l 0 SPEEA-represented employees in the Puget Sound.

b. 2014:

i. 787-10 non-recurring aft body structures and systems installation work affecting approximately 20 SPEEA-represented employees in the Puget Sound;

ii. 787 sustaining mid body structures and systems installation work affecting approximately 5 SPEEA-represented employees in the Puget Sound;

iii. Concept Center Alignment for Engineering Design Centers affecting approximately 30 to 40 SPEEA-represented employees in the Puget Sound;

iv. Boeing Research & Technology work affecting approximately 1,000 SPEEA-represented employees in the Puget Sound;

v. CAS Customer Support work affecting approximately 1,000 SPEEA-represented employees in the Puget Sound;

vi. CAS media services support work affecting approximately 25 SPEEA-represented employees in the Puget Sound;

vii. Global Services and Support work affecting approximately 1,000 SPEEA-represented employees in the Puget Sound; and

viii. 737 MAX Fan Cowl work affecting approximately 20 SPEEA-represented employees in the Puget Sound.

3. SPEEA never made any demand or request to bargain over the decisions concerning these relocations, realignments, and movements of work identified in paragraph 2 of this joint stipulation.

4. Since at least 1990, SPEEA has never filed an unfair labor practice charge with the National Labor Relations Board alleging that Boeing decided to relocate, realign, or move work performed by SPEEA-represented employees without first providing SPEEA with notice and an opportunity to bargain over the decision.

5. Since at least 1990, SPEEA has never filed an unfair labor practice charge with the National Labor Relations Board alleging that Boeing violated Section 8(a)(5) of the National Labor Relations Act by unilaterally relocating, realigning, or moving work performed by SPEEA-represented employees.

6. Since at least 1990, SPEEA has never brought any grievance or demanded arbitration pursuant to its collective-bargaining agreements with Boeing alleging that Boeing breached those collective-bargaining agreements by unilaterally relocating, realigning, or moving work performed by SPEEA-represented employees.

IV. The Information Requests at Issue in This Case

Boeing and SPEEA are currently signatories to a collective-bargaining agreement (CBA) which contains as an addendum a letter of understanding (LOU 6) which established a joint

workforce committee (JWC) in which both parties agreed to participate. The purpose of the committee is to:

> discuss and provide relevant, necessary information on a variety of workforce related subjects, such as skills management, the Performance Management process, employment forecast, current and future business and its influence on staffing strategies, the job posting and transfer process, workforce education, and new skills development training related to future skills and competencies. (Tr. 122; GC Exh. 2 p. 58; GC Exh. 3, p. 60.).

The JWC meetings are held monthly and representatives from both Boeing and SPEEA attend. Boeing uses these meeting to communicate with SPEEA regarding the relocation of bargaining work and the potential impact on the bargaining units. (Tr. 25, 26, 122, 124.) During these meetings, which often take the form of power point slide presentations, SPEAA is afforded the opportunity to ask questions about work that is being moved. (Tr. 153.)

The background facts pertinent to this case begin in June of 2013, where at a JWC meeting Boeing informed SPEAA of its decision to relocate 1000 bargaining unit jobs from the Puget Sound area to Long Beach, California. (Tr. 26.) Thereafter, at the December 2013, JWC meeting, Boeing announced its decision to implement a Boeing research and technology (BR&T) study. The results of the study would be the relocation of bargaining unit work to multiple locations across the United States, creating fewer opportunities for SPEEA represented employees including the potential for layoffs. (Tr. 27–28). At the January 2014 JWC meeting, SPEAA was updated and provided an estimate of the expected reductions in BR&T pursuant to the plan initially laid out in the December meeting. (Tr. 36–37). At the February 2014 JWC meeting, Boeing provided another update of its plans regarding the BR&T relocation and also announced the potential relocation of work relating to commercial aviation services (CAS). (Tr. 147.) The discussion surrounding CAS involved the movement of work from Puget Sound to Southern California. (Tr. 147.) At this meeting, SPEEA officials asked if Boeing was planning on making any other announcements regarding the relocation of work similar to that made in December. (Tr. 39.) Todd Zarfos, the vice president for engineering for the Washington State Design Center and senior chief engineer for systems for Boeing Commercial Airplanes responded directly that they would continue to see these types of studies and movement impacting the Puget Sound work force. On March 27, 2014, Richard Plunkett, SPEEAA's director of strategic development sent Yvonne Marx, Boeing's employee relations specialist, an information request. The request was written by Sean Leonard, SPEEA's contract administrator but signed by Plunkett and provided in pertinent part as follows:

> SPEEA requires information about the possible movement of unit work and/or work opportunities, in order to fully and fairly represent its members.
>
> Please provide the following information relating to "relocation" and/or "realignment" of work currently being performed by SPEEA-represented employees in the Puget Sound:

1. Provide any and all documents related to the Company's plans to "relocate or "realign" such work, including but not limited to:

a. Any studies relating to the "relocation" and/or "realignment" of such work.

b. Any documents relating to specific plans for such "relocation" and/or "realignment" of such work.

c. Any documents relating to the timeline for implementation of such "relocation" and/or "realignment."

d. Any documents relating to the acquisition of property, relocation of equipment, and/or any and all other actions taken by the Company to prepare for such "relocation" and/or "realignment."

e. Any documents relating to meetings that the Company has held, or plans to hold, with SPEEA-represented employees to discuss such "relocation" and/or "realignment,"

f. Any documents relating to "Operation Dragonridge" and/or any similar or related Operation.

(GC Exh. 6.).

On April 2, 2014, Yvonne Marx responded to the request for information with the following:

I am writing in response to your request for information dated March 27, 2014 in which you request extensive information regarding the possible future relocation of SPEEA-represented work. We are struck by the breadth and scope of the request and struggling to understand the basis upon which the Union believes it is entitled to the requested data.

As a preliminary matter, we take issue with your characterization of the Company's statements. The Company did not make a blanket statement that work will continue to be moved out of the Puget Sound as your request suggests. As you know, the Company maintains the legal and contractual right to locate engineering work in any location, and is continually evaluating the most effective ways to utilize its workforce, including options for the placement of work. Studies undertaken to evaluate the viability of a work location are highly confidential and often speculative business planning exercises, many of which never progress further than mere exploration.

The Union predicates its data request on nothing more than a mischaracterization of the Company's position during an unspecified Joint Workforce Committee meeting, and the bald assertion that "SPEEA

> requires information about the possible movement of unit work and/or work opportunities, in order to fully and fairly represent its members." There is nothing within existing law or the parties' contract that requires the Company to provide the union with information regarding such studies – certainly not based on such thinly supported alleged relevance.
>
> We are also at a loss for why you feel the existing process does not provide you with adequate information regarding work movement initiatives. The parties have a longstanding practice of utilizing the Joint Workforce Committee to share information regarding work movement. In those meetings, the union is provided with information relating to those studies that have advanced beyond mere exploration and that are likely to have an actual impact on SPEEA members.
>
> These studies are typically shared months in advance, giving SPEEA more than ample time and data to sufficiently represent its employees' interests. There are Joint Workforce Committee meetings scheduled for both the 10th and 24th of this month, and we would be happy to discuss any specific questions you have regarding the studies that have been announced at either of those sessions.
>
> In the meantime, if there are specific provisions of the CBA that you believe the administration of which requires the requested data, please identify those provisions and we will evaluate what information could be provided to help facilitate your request.
>
> Notwithstanding the above, the Company will provide documents relating to meetings it has held with SPEEA-represented employees regarding the relocation of SPEEA-covered work. If there are specific meetings that you believe have occurred for which you would like information, please identify them specifically to help facilitate a prompt response.

(GC Exh. 7.)

What is evident from reading the response of Ms. Marx is that it contradicts the testimony of Todd Zarfos. Although in her response she asserts, "the company did not make a blanket statement that work will continue to be moved out," Zarfos's testimony as set forth above suggests otherwise. (Tr. 30, 148.) Marx also asserts that the Union predicated its data request on "nothing more than a mischaracterization of the company's position during an unspecified Joint Workforce Committee meeting." (GC Exh. 7.) Zarfos's testimony also undermines the notion that SPEEA "mischaracterized" the company's position. (Tr. 30, 148.)

On April 11, 2014, SPEEA responded to Marx's letter as follows:

> We don't believe we have mischaracterized the Company's statements at the Joint Workforce meeting concerning the movement of work. We don't have a court

reporter attend those meetings, but essentially this is what happened: At the Joint Workforce Committee meeting on February 27, the Company was asked if more movement of SPEEA work was coming similar to what is happening in BR&T. Todd Zarfos responded quite clearly that there was going to be more relocation of SPEEA work, specifically in CAS.

In any event, we don't need to get into a debate about what was said at the Joint Workforce meeting. The information about potential relocation of SPEEA work or work opportunities is presumptively relevant information which the Union is entitled to upon request. Indeed, the fact that the Company is now disputing what was verbally said at the February 27 Workforce meeting about this subject underscores our need for actual documents.

As stated in the request, SPEEA requires information about the potential transfer and movement of work currently performed by SPEEA-represented employees in order to fully and fairly represent its members. Although this information is presumptively relevant under the National Labor Relations Act, I can elaborate. Receiving information about planned work transfers (actual documents, provided sooner than 15 minutes before the announcement is given to employees) will help SPEEA evaluate potential decisional and effects bargaining over the transfers. Additionally, it will help SPEEA assist its members in planning for potential layoff or other impacts to their careers.

Your April 2nd letter stated that you were refusing to provide information about studies on the grounds that these are "'often speculative business planning exercises, many of which never progress further than mere exploration." This is unacceptable, for as you know, six business days after the date of your (April2) letter, the Company announced at the April 10 Joint Workforce meeting it had completed a study and decided to move 1,000 SPEEA-represented C A S jobs to Southern California. Subsequently, a carefully drafted announcement was disseminated to employees within 15 minutes of the announcement in the Workforce meeting, strongly suggesting that the "study" had been completed well before its disclosure to SPEEA. The company refused to explain when the "study" had been completed.

Although we appreciate that the Joint Workforce committee is available to discuss certain issues regarding the SPEEA-represented workforce at Boeing, this forum is no substitute for receiving documents and information under the National Labor Relations Act. The existence of the Joint Workforce committee is not a waiver of the Union's right to information.

Please provide the information requested by the Union right away. The Boeing Company's refusal to provide the information is an unfair labor

> practice, and if continued SPEEAA is prepared to file charges with the National Labor Relations Board.
>
> (GC Exh. 8.)

On April 30, 2014, Marx responded to the April 11, 2014 letter as follows:

> It is clear we maintain a fundamentally different view of our obligations. The Union bases its request on an alleged entitlement to instantaneous notification of any decision the Company makes that could potentially impact SPEEA members. The Company is under no such obligation. While we certainly strive to provide the union with reasonable notice of such decisions, there is no legal or contractual basis supporting any particular duration of advance notice. Apart from dissatisfaction with the length of advance notice of the Company's decisions, the only substantive basis alleged for the need for this information is to facilitate possible decision and effects bargaining. The parties' contract provides explicitly that "the location, occurrence and existence of any condition necessitating a workforce reduction, and the number of employees involved, will be determined exclusively by the Company." We see no decision bargaining obligations.
>
> As to effects bargaining, there is nothing within the effects bargaining context that would require the Company to provide the union with any specific duration of notice of its decision to exercise its rights. We note that there is no pending request for effects bargaining, but we remain more than willing to engage in such discussions and to provide information reasonably necessary to effectuate them.
>
> Notwithstanding the above, the Company will provide documents relating to meetings it has held with SPEEA-represented employees regarding the relocation of SPEEA-covered work. If there are specific meetings that you believe have occurred for which you would like information, please identify them specifically to help facilitate a prompt response.

(GC Exh. 9.)

Boeing refused to acknowledge that it had any obligation to provide the requested information and did not provide information responsive to the Union's request. The only information provided was the information conveyed at the Joint Work Force Committee meetings.

A. The Duty to Provide Information

If an employer fails to provide the union with requested information that is relevant to the union's proper performance of its collective-bargaining obligations it violates Section 8(a)(5) and (1) of the Act. *Leland Stanford Junior University & Service Employees Local No. 715, SEIU,* 262 NLRB 136, 138 (1982) (citing *Detroit Edison Co. v. NLRB,* 440 U.S. 301, 303 (1979)). An employer is obligated under the Act to provide requested information that is relevant to the union's responsibilities regarding both administration and enforcement of an existing collective-bargaining agreement. *NLRB v. Truitt Mfg. Co.,* 351 U.S. 149, 152–153 (1956).

The relevance of any request is ascertained by analyzing the information request against a liberal "discovery" standard of relevance as distinguished from the standard of relevance in trial proceedings. *NLRB v. Acme Industrial Co.,* 385 U.S. 432 fn. 6 (1967). The discovery standard for relevance is construed "broadly to encompass any matter that bears on or that reasonably could lead to other matter[s] that could bear on, any issue…" O*ppenheimer Fund, Inc. v. Sanders,* 437 U.S. 340, 351 (1978), *Hickman v. Taylor,* 329 U.S. 495, 51 (1947).

The information doesn't have to be dispositive of the issues between the parties; it only has to have some bearing on it. Thus, an employer must furnish information that is of even probable or potential relevance to the union's duties. *Pfizer Inc.,* 268 NLRB 916 (1984); *Conrock Co.,* 263 NLRB 1293, 1294 (1982).

B. Relevance

a) The Information Request Was Presumptively Relevant

The evidence of record establishes, and I find, that the information requested by the union was presumptively relevant. More specifically, I find that the information request set forth herein dated March 27, 2014, was presumptively relevant because each separate item within the request, on its face, sought information regarding the movement, relocation or realignment of work. Section 1a sought "studies" regarding the movement of work. Section 1b sought documents relating to the movement of work. Section 1c sought information regarding the time line for the movement of work. Section 1d sought information regarding the acquisition of property related to the movement of work. Section 1e sought information regarding information regarding meetings held that related to the movement of work. Section 1f sought information regarding "Operation Dragonridge," a code name for a study related to the movement of work. It is well settled that information concerning wages, hours, and other terms and conditions of employment for unit employees is presumptively relevant to the union's role as exclusive collective-bargaining representative. See *Southern California Gas Co.,* 344 NLRB 231, 235 (2005). The Board has repeatedly held that the relocation of work directly impacts the terms and conditions of employment of affected employees and information including studies regarding such is presumptively relevant. See *Galicks, Inc.*, 354 NLRB 295, 310 (2009), enfd. *NLRB v. Galicks, Inc.*, 671 F.3d 602 (6th Cir. 2012); *North Star Steel,* 347 NLRB 1364 (2006); *E.I. du Pont Nemours & Co.*, 346 NLRB 553, 578 (2006); *Litton Microwave Cooking Products Div.*, 283 NLRB 973, 974–975 (1989); *Whitehead Bros. Co.*, 263 NLRB 895, 900 (1982); *Safeway Stores*, 252 NLRB 682, 685–686 (1980).

C. Respondent's Contentions

The Respondent contended that it had no duty to provide the information to the union regarding "possible" movement of work for which it had made no decision. (R. Br. at 21.) I am not persuaded by Respondent's argument. Although in other contexts Respondent's argument might be persuasive, under the facts of this case, Respondent's argument does not carry the day. Respondent argues that employers have no obligation to disclose to a union "every thought or possibility" discussed by management concerning potential decisions that might impact the terms and conditions of the bargaining unit (citing *Valley Mould & Iron Co*., 226 NLRB 1211, 1213 (1976))." (R. Br. at 22.) Respondent's argument ignores two important undisputed facts, first the union was directly informed by Zarfos that more movement of work would impact the Puget Sound area and secondly 8 days after the date of Marx's April 2, 2014 letter, the Company announced at the April 10, 2014 JWC meeting that it had completed a study and decided to move 1000 jobs to Southern California. Unlike *Valley Mould,* in this case the employer had taken "sufficiently concrete" actions to warrant disclosure. It is patently obvious that the actions surrounding the moving of 1000 jobs were not simply "ideas written on napkins" as Respondent suggests. (Tr. 111.) It simply was not true (as alleged by Respondent) that the union sought information about "potential movement of work for which Boeing had not yet made a decision." As noted above, both the testimony of Zarfos and the actions of Boeing make clear that in fact Boeing did make decisions. Respondent nevertheless failed to provide the union with any information. Respondent's attempt to hide behind the union's use to the term "possible" to shield it from producing information about decisions that were concrete and in the process of being implemented is simply semantic gamesmanship designed to keep the union in the dark about its plans. If Respondent believed the use of the term "possible" was ambiguous it had a duty to seek clarification. Respondent concedes that "if an employer believes a request is ambiguous or overbroad it must seek clarification or comply with the request to the extent it encompasses relevant information." *Superior Protection Inc.,* 341 NLRB 267, 269 (2004), enfd. 401 F.3d 282 (5th Cir. 2005), cert denied 546 U.S. 874 (2005).

a. SPEEA Did Not Waive Its Right To Receive Information and the Information Request was Neither Overly Broad and\or Unduly Burdensome

Despite Zarfos's vague assertions to the contrary (which I do not credit and are unsubstantiated by any written documentation in record) there is no credible evidence that Boeing genuinely sought to clarify the breadth of the SPEEA's request. (Tr. 172.) Boeing was in a better position to seek clarification from the union if it was inclined to do so but other than to ask the union to identify specific relocation meetings it didn't make any genuine attempt to seek clarification or narrow down the requests. (GC Exhs. 7 and 9.) For example, the record is devoid of any instance where Boeing asked whether the union wanted only information regarding decisions or studies that were completed. Instead, Respondent in its response to the information request denied that it was even seeking to move work in the Puget Sound area. (GC Exh. 7.) I concur with Charging Party that if Boeing was concerned about the "over breadth of the request or confused over what kind of materials, exactly SPEEA sought, Boeing had the duty

to inquire." (CP Br. at 9.) There is nothing in the record to suggest, as Respondent asserts, that "Boeing promptly and repeatedly asked SPEAA to clarify its information requests." (R. Br. at 29). In view of this fact, Respondent's arguments of waiver premised upon this failure to clarify must necessarily fail.

I also find that the information requested was not overly broad. Despite the "wide net" that was cast by SPEEA, it is clear from an objective reading of the requests that each item requested was tailored around only one specific subject area (the movement of work). Although SPEEA's request was aimed at discovering all relevant information related to the movement of work (a topic which it was under an obligation to inquire about) there is nothing in the record except vague assertions to establish that the production of the information would have been burdensome. Any claim that documents cannot be produced or are too burdensome to be produced must be asserted and proven. Vague assertions of burdensomeness are insufficient to carry the Respondent's burden. *Lenox Hill Hospital & the New York Professional Nurses Union*, 362 NLRB No. 16 (2015). Despite Respondent's duty to provide the information in its possession, make a reasonable effort to secure any unavailable information, and, if any information remained unavailable, explain and document the reasons for its continued unavailability, the record is devoid of any evidence to establish that Respondent made any genuine effort to provide SPEEA with any of the requested information. See *Garcia Trucking Service*, 342 NLRB 764 (2004).

b. Decisional Bargaining

Respondent asserts that *California Pacific Medical Center*, 337 NLRB 910 (2002), and *Ingham Medical Center*, 342 NLRB 1259 (2004), support its decision to not provide the requested information. These cases stand for the proposition that a union cannot demonstrate relevance of the information request if the Respondent had no duty to bargain about the underlying decision. Respondent's reliance upon these and other similar cases are inapposite because they fail to address the issues presented in this case and/or are readily distinguishable. That is to say that Respondent relies upon article 8.2 of the CBA for the proposition that the employer retained the right to relocate bargaining unit work without first bargaining with the union. Respondent argued that because it had no duty to bargain about the movement of work, the information sought by SPEEA was irrelevant.

I am not persuaded by this argument because article 8.2 does not clearly establish that Respondent had no duty to bargain. A close reading of article 8.2 of CBA the reveals that it addresses "workforce reductions" not work relocation. Under the facts presented, the workforce was not being "reduced," rather the work was simply being moved to a different location (presumably to be performed by nonunion personnel who were not members of the bargaining unit). Accordingly, article 8.2 has questionable applicability because as the union argued, under *Dubuque Packing*, 303 NLRB 386 (1991),enfd. 1 F.3d 24 (D.C. Cir. 1993), a duty to engage in decisional bargaining may in fact have arisen. Given the complexities surrounding the *Dubuque Packing* analysis whether any duty regarding decisional bargaining had or hadn't arisen could only be answered by referencing the very information sought. This information, in essence, would provide SPEEA with the information necessary for it to determine whether it was or was not appropriate to demand decisional bargaining. (See CP. Br. at 14.)

Upon careful review, it also becomes evident that the cases cited by Respondent do not address the specific question regarding whether the information sought was necessary for the union to determine whether to engage in effects bargaining. In her letter of April 30, 2014, Marx stated, "[w]e note that there is no pending request for effects bargaining, but we remain more than willing to engage in such discussions and to provide information reasonably necessary to effectuate them." (GC Exh. 9.) Marx misses the point because as pointed out by the court in *Florida Steel Corp. v. NLRB*, 601 F.2d 125, 129 (4th Cir. 1979), "the discovery standard of relevance applies precisely because the union cannot decide what role it will seek to play until it obtains concrete, adequate information." Without the requested information the union is unable to determine what effects bargaining might even be appropriate.

Moreover, there is no evidence from which to conclude that SPEEA waived its right to engage in effects bargaining. Marx concedes that effects bargaining may in fact be appropriate. Regardless, of whether there is any right to bargain over the movement of work, the CBA specifically contains terms that might be implicated triggering residual bargaining obligations regarding the movement of work. For example, article 21 contains specific contractual terms related to layoffs. Clearly, even if for the sake of argument, the union could not engage in decisional bargaining regarding the movement of work, article 21 gives employees certain rights related to layoffs which SPEEAA is under a statutory obligation to ensure are adequately recognized. See *Torrington Co. v. NLRB,* 545 F.2d 840 (2nd Cir. 1976). Respondent's assertions simply fail to rebut the presumption of relevance and/or establish lack of relevance of the information requested by SPEEA. See *Certco Distribution Centers*, 346 NLRB 1214, 1215 (2006); *AK Steel Corp.,* 324 NLRB 173, 183 (1997).

The Respondent also asserts that article 2 of the CBA and past practices vests Respondent with broad authority to relocate work and thus by implication the union waived its right to information concerning the relocation of work. The joint stipulation makes clear that there has been a history of Respondent unilaterally relocating work without SPEEA making any demand or request to bargain over the decisions. See (Jt. Exh. 1). Nevertheless, the record contains no showing of "clear and unmistakable waiver." See *Metropolitan Edison Co., v. NLRB*, 406 U.S. 708 (1983). Nor do I find that past practices operated to forever waive SPEEA's future statutory rights. See *E.R. Steubner*, 313 NLRB 459 (1993). There is simply no evidence in the record to support a finding that, "the matter claimed to have been waived was fully discussed by the parties and that the party alleged to have waived its rights consciously yielded its interest in the matter." *Allison Corp*., 330 NLRB 1363, 1365 (2000).

c. **The Failure to Provide Relevant Information.**

The union was entitled to all of the presumptively relevant information referenced above and I find that Respondent's refusal and/or failure to provide the information violated the Act. It is undisputed that although Marx in her letters of April 2 and 30, 2014, promised to provide some information that might have been responsive to some part to the information request, the promised information was never provided. (GC Exhs. 7, 9, Tr. 54.) "The refusal of an employer to provide a bargaining agent with information relevant to the union's task of representing its constituency is a per se violation of the act without regard to the employer's subjective good or bad faith." *Piggly Wiggly Midwest, LLC*, 357 NLRB 191 (2012), *Brooklyn Union Gas Co*., 220

NLRB 189, 191 (1975); *Procter & Gamble Mfg. Co.,* 237 NLRB 747, 751 (1978), enfd. 603 F.2d 1310 (8th Cir. 1979). Furthermore, an unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all. *Valley Inventory Service*, 295 NLRB 1163, 1166 (1989), *Woodland Clinic*, 331 NLRB 735, 736 (2000). It is undisputed that Respondent failed to provide any of the requested information and in doing so its actions were in direct contravention of the Act.

Conclusions of Law

1. The Respondent, The Boeing Company, is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party the Society of Professional Engineering Employees in Aerospace, affiliated with International Federation of Professional and Technical Engineers, Local 2001 (Union) is a labor organization with the meaning of Section 2(5) of the Act.

3. At all material times the Union has been the designated exclusive collective-bargaining representative of the following bargaining units of Respondent's employees:

   a) Professional Unit

      Professional employees, working at Respondent's facilities in the units described in Articles 1.1(a), 1.1(b), 1.1(c), 1.1(d) and 1.1(e) of the Collective Bargaining Agreement for the Professional Bargaining Units.

   b) Technical Unit

      Technical employees, working at Respondent's facilities in the units described in Articles 1.1(a), 1.1(b), 1.1(c), of the Collective Bargaining Agreement for the Technical Bargaining Units.

4. The Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide information requested by the Union and relevant to the Union's representational duties.

5. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall provide the Union with the information requested in paragraphs 1a-f, of its March 27, 2014 request for information.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

Order

The Respondent, The Boeing Company, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and/or refusing to provide information requested by the Union that is relevant and necessary to the Union's representational status.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) In a timely manner, furnish the Union with the information requested by the Union in paragraphs 1a-f of its March 27, 2014 request for information.

(b) Within 14 days after service by the Region, post at its facility in Seattle, Washington, copies of the attached notice marked "Appendix."[28] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.[1]

Dated, Washington, D.C. July 14, 2015

Dickie Montemayor
Administrative Law Judge

[1] If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading, "posted by Order of the National Labor Relations Board Shall read, "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

Notice to Employees
Mailed by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post, mail, and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose a representative to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT refuse/ and/or fail to provide the Union with requested information that is relevant and necessary to the performance of its duties as the collective-bargaining representative of our employees in the units as described in article 1 of the most recent collective-bargaining professional and technical agreements between the Union and us.

WE WILL provide the Union with the information it requested in its information request of March 27, 2014.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

THE BOEING COMPANY
(Respondent)

Dated:_____By:_____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlrb.gov.

915 2nd Ave., Ste 2948, Seattle, WA 98174-1006
(206) 220-6300 Hours of Operation: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/19-CA-128941 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (206) 220-6284.